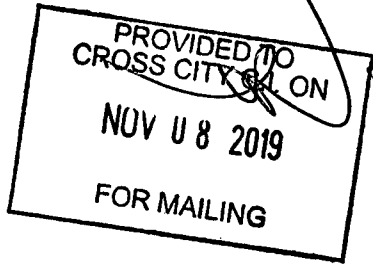
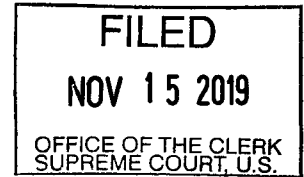


ORIGINAL



19-6874  
No. \_\_\_\_\_



IN THE  
SUPREME COURT OF THE UNITED STATES

---

STEPHEN DANIEL LEONARD – Petitioner

vs.

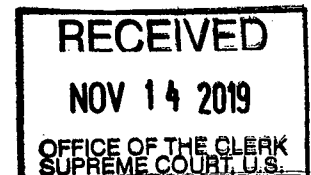
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT –  
Respondent

ON PETITION FOR WRIT OF MANDAMUS TO THE:  
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR EXTRAORDINARY WRIT

Stephen D. Leonard, DC# 448091  
Cross City Correctional Institution  
568 N.E. 255<sup>th</sup> Street  
Cross City, Florida 32628

Petitioner, *pro se*



## QUESTIONS PRESENTED

- 1.) Did the United States Court of Appeals for the Eleventh Circuit abuse its discretion when refusing to file the Petitioner's Motion for Leave to Proceed in Forma Pauperis on appeal pursuant to Federal Rules of Appellate Procedure Rule 24(a)(5)?
- 2.) Did the United States Court of Appeals for the Eleventh Circuit abuse its discretion when reviewing Petitioner's appeal under the three strikes provision of 28 U.S.C. § 1915(g)?
- 3.) Did the United States Court of Appeals for the Eleventh Circuit violate domestic and international laws when refusing Petitioner's pleadings and closing the case?

STATEMENT ON RULE 20.1  
Procedure on a Petition for Extraordinary Writ

---

Petitioner, Stephen D. Leonard, pro se, moves this Court to accept this case to aid this Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

I. To Aid This Court's Appellate Jurisdiction

This case comes from the Eleventh Circuit Court of Appeals due to the Eleventh Circuit's refusal to file papers, motions, and or Petitions on a timely appeal taken in a Civil Case under 42 U.S.C. 1983 that (1) clearly set forth a claim; and (2) cited imminent fear of serious bodily/physical injuries. See Banker's Life Casualty Co. v. Holland, 346 U.S. 379, 383 (1953) ("traditional use of the writ in aid of appellate jurisdiction both at common law and in the federal courts has been to confine an inferior court to a lawful exercise of its prescribed jurisdiction or 'compel it to exercise its authority when it is its duty to do so.'" Roche v. Evaporated Milk Asso., 319 U.S. 21, 26 n.6 (1943).

Here, the Respondent's are refusing to file papers and refusing to allow a Circuit Judge to Rule upon the objections filed to the actions taken by the Clerk of the Circuit Court under Fed. R. App. P. 27(b), i.e., ["A party adversely affected by the Court's, or clerk's action may file a motion to reconsider, vacate, or modify the disposition...".]

The actions of the Eleventh Circuit Court of Appeals are: (1) an abuse of discretionary power; (2) usurpation of judicial powers by the Clerk, for refusals to file papers objecting to said clerks actions closing the case; and (3) the Court's refusal to comply with federal law upon review of a Motion to Proceed I.F.P. on Appeal under Rule 24(a)(1) Fed. R. App. P.

## **II. Exceptional Circumstances Warrant the Exercise of this Court's Discretionary Powers.**

Exceptional Circumstances are as follows:

(a) The Eleventh Circuit Court of Appeals has, sua sponte, ideated a way to deny pro se litigant's appellate review by allowing a Circuit Court Clerk to review and rule upon appeals and/or Motions for Leave to Proceed Informa Pauperis on Appeal, in clear violation of Legislature's intent of enacting Article III U.S. Const.; and 28 U.S.C. 1915. See La Bay v. Howes Leather Co., 352 U.S. 249, 257 (1957) ("All writs Act is meant to be used only in the exceptional case where there is clear abuse of discretion or 'usurpation of judicial power...'").

## **III. Adequate Relief Cannot be Obtained in Any Other Form or From Any Other Court.**

The Supreme Court of the United States Rules 10, 17 and 18 provide a provision to review decisions by an inferior court when an inferior court "has so far departed from the accepted and usual course of judicial proceedings" and "has decided an important federal question in a way that conflicts with relevant decisions of this Court."

Here, the Eleventh Circuit Court of Appeals has refused to review and/or consider the Petitioner's appeal based upon the Circuit Court Clerk's opinion that Petitioner is not entitled to an appeal under 28 U.S.C. 1915, regardless of fact that Petitioner cited fear and imminent serious physical injury exemption under 28 U.S.C. 1915(g).

No other court can or will hear an appeal of a final order from the United States Court of Appeals for the Eleventh Circuit.

### LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- 1.) Robert N. Scola Jr., United States District Judge: 400 N. Miami Ave., Miami, FL 33128.
- 2.) David J. Smith, United States Circuit Court Clerk: 56 Forsyth St. N.W., Atlanta, GA 30303
- 3.) Gloria M. Powell, United States Circuit Court Deputy Clerk: 56 Forsyth St. N.W., Atlanta, GA 30303
- 4.) Denise E. O'Guin, United States Circuit Court Deputy Clerk: 56 Forsyth St. N.W., Atlanta, GA 30303
- 5.) Director, Administrative Office of the United States Courts: c/o Solicitor General of the United States: 950 Pennsylvania Ave. N.W., Rm. 5616, Washington, D.C. 20530-0001

## TABLE OF CONTENTS

TABLE OF CONTENTS .....	1
TABLE OF AUTHORITIES CITED.....	4
JURISDICTION.....	7
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	9
REASONS FOR GRANTING THE PETITION.....	21

- I. The United States Court of Appeals for the Eleventh Circuit, Clerk David J. Smith and Deputy Clerk Gloria M. Powell abused their discretion when viewing the appeal 19-12058-E as an appeal under the three strikes provision of the PLRA of 1995, when Petitioner clearly cited in the complaint and amended complaint that Petitioner was in imminent fear of serious bodily injuries. *Carson v. Johnson*, 112 F.3d 818, 821 (5<sup>th</sup> Cir. 1997); *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996); *Bounds v. Smith*, 430 U.S. 817, 821-22 (1977); see also Fed. R. App. P. Rule 3(a)(1).....21
- II. The United States Court of Appeals for the Eleventh Circuit, Clerk David J. Smith and Deputy Clerk Gloria M. Powell violated Fed. R. App. P. Rule 25(a)(4) when refusing to accept for filing Petitioner's legal documents. ....21
- III. The United States Court of Appeals for the Eleventh Circuit, Clerk David J. Smith and Deputy Clerk Gloria M. Powell violated Fed. R. App. P. Rule 25(a)(4) when refusing to accept for filing Petitioner's legal documents. ....21
- IV. The United States Court of Appeals for the Eleventh Circuit, Clerk David J. Smith and Deputy Clerk Gloria M. Powell violated Fed. R. App. P. Rule 24(a)(1), (5) when refusing to accept and file the Petitioner's Motion for Leave to Proceed I.F.P. on Appeal on July 01, 2019. See *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306 (11<sup>th</sup> Cir. 2004); see also *Daker v. Commissioner, Georgia Department of Corrections*, 820 F.3d 1278, 1281 (11<sup>th</sup> Cir. 2016).....21

- V. The United States Court of Appeals for the Eleventh Circuit, Clerk David J. Smith and Deputy Clerk Gloria M. Powell violated Treaties made by the United States, i.e. U.D.H.R. Articles 6, 8, 10, and 28 when denying Petitioner: (1) the right to recognition as a person before the law; (2) the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law; (3) the right in full equality to a fair and public hearing by an independent and impartial tribunal...; and (4) to a social and international order in which the rights and freedoms set forth in this Declaration..." see *Medellin v. Texas*, 128 S. Ct. 1346 (2008) (dissent of Bryer, J. with whom Souter and Ginsburg, J.J. join) ("The Constitution's Supremacy Clause provides that: "all treaties... which shall be made... under the authority of the United States, shall be the Supreme law of the land; and the judges in every state shall be bound thereby." Art. IV §2. The clause means that the "Courts" must regard "a treaty ... as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision." *Foster v. Neilson*, 2 Pet. 253, 314 7 L. Ed 415 (1829) (majority opinion of Marshall, C.J.); see also Am. 94(1), 59 Stat. 1051 (United Nations Charter), T.S. No. 993 (1945). .....22

CONCLUSION.....23



## INDEX TO APPENDICES

### Appendix

A. United States Court of Appeals for the Eleventh Circuit Orders.

B. United States District Court for the Southern District of Florida Orders.

Expanded list of Appendix's A & B:

A: Court Order 11th C.C.A. (19-12058-E) 09-25-2019; Returned Unfiled:

A: Returned Unfiled: 11th C.C.A. (19-12058-E / 19-12802-A) 09-18-2019 Letters, Motion To Consolidate, Declaration of Immediate Filing, C.I.P., Order Denying Motion To Appeal I.F.P., Affidavit Accompanying Motion For Permission To Appeal I.F.P. Application To Proceed w/o Prepayment of Fees and Affidavit, 6 mos. Trust fund Statements, Notice of Appeal, Supplemental Affidavit To Motion For Permission To Proceed I.F.P. on Appeal;

A: Court Order 11th C.C.A. (19-12802-A) 08-23-2019; Returned Unfiled: Motion For Leave To Proceed I.F.P. on Appeal;

A: Court Order U.S.D.C. So. Dist. of Fla. (19-20527-RMS) 08-19-2019; Denying Motion To Appeal In Forma Pauperis;

A: Court Order 11th C.C.A. (19-12058-E) 07-12-2019: Returned Unfiled:

A: Returned Unfiled: Motion For Extension of Time To File Brief, Motion For Leave To Proceed I.F.P.;

A: Petition For Panel Rehearing;

A: Motion For Leave To Proceed I.F.P. on Appeal;

A: Court Order 11th C.C.A. (19-12058-E) 06-27-2019: Returned Unfiled: Motion For Reconsideration;

A: Court Order 11th C.C.A. (19-12058-E) 06-26-2019: Entry of Dismissal;

A: Motion For Reconsideration; C.I.P.

## INDEX TO APPENDICES

### Appendix

- B: Notice of Appeal (19-20527-RNS); Letter 05/21/2019
- B: Order On Petitioner's Objection and Motion For Rehearing (19-20527-RNS)  
05/10/2019
- B: Motion For Rehearing (19-20527-RNS)
- B: Order Adopting Magistrate Judge's Report And Recommendation (19-20527-RNS)
- B: Report And Recommendation (19-20527-RNS)
- B: Application To Proceed In District Court Without Prepaying Fees or Costs  
(19-20527-RNS).

## TABLE OF AUTHORITIES CITED

### **Cases**

<u>Bounds v. Smith</u> , 430 U.S. 817, 821-22 (1977).....	20
<u>Carson v. Johnson</u> , 112 F.3d 818, 821 (5 <sup>th</sup> Cir. 1997).....	20
<u>Daker v. Commissioner, Georgia Department of Corrections</u> , 820 F.3d 1278, 1281 (11 <sup>th</sup> Cir. 2016).....	20
<u>Dawson v. Marshall</u> , 561 F.3d 930, 931-33 (9 <sup>th</sup> Cir. 2009).....	15
<u>Foster v. Neilson</u> , 2 Pet. 253, 314, 7 L. Ed 415 (1829) .....	21
<u>Gibbs v. Roman</u> , 116 F.3d 83, 85 (3d Cir 1997) .....	16
<u>M.L.B. v. S.L.J.</u> , 519 U.S. 102 (1996) .....	20
<u>Markowitz v. Northeast Land Co.</u> , 906 F.2d 100, 103 (3d Cir. 1990) .....	16
<u>Martinez v. Kristi Kleaners, Inc.</u> , 364 F.3d 1305, 1306 (11 <sup>th</sup> Cir. 2004).....	20
<u>Medellin v. Texas</u> , 128 S. Ct. 1346 (2008).....	21
<u>Nami v. Fauver</u> , 82 F.3d 63, 65 (3d Cir. 1996).....	16
<u>Thomas v. Arn</u> , 474 U.S. 140, 150, 154 (1985).....	15
<u>Windland v. Quarterman</u> , 578 F.3d 341, 316 (5 <sup>th</sup> Cir. 2009).....	16

### **Statutes**

Title 28 U.S.C. 1915(a)(1), (g) (2019).....	2, 5, 11, 13, 15
---------------------------------------------	------------------

### **Other Authorities**

<u>Article 6</u> Universal Declaration of Human Rights.....	12
<u>Article 8</u> Universal Declaration of Human Rights.....	13
<u>Article 10</u> Universal Declaration of Human Rights .....	13
<u>Article 28</u> Universal Declaration of Human Rights .....	13

## **Rules**

Federal Rules of Appellate Procedure, Rule 24 .....	10, 17, 20
Federal Rules of Appellate Procedure, Rule 25 .....	11, 20
Federal Rules of Appellate Procedure, Rule 27 .....	11, 16, 19
Eleventh Circuit Rule 42-1(b) .....	8, 13, 14, 16

## **Constitutional Provisions**

<u>Article III § 2</u> United States Constitution .....	8
<u>Article IV §1</u> United States Constitution .....	8
<u>Article VI Cl.2</u> United States Constitution .....	8
<u>Amendment I</u> United States Constitution .....	9
<u>Amendment IV</u> United States Constitution .....	9

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR EXTRAORDINARY WRIT

Petitioner respectfully prays that a Extraordinary Writ issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or

☒ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

### JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 26, 2019.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a petition for Extraordinary Writ was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1651(a).

☒ For cases from state courts:

The date on which the highest state court decided my case was \_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was on the following date: \_\_\_\_\_, and a \_\_\_\_\_ copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a Extraordinary Writ was granted to and including \_\_\_\_\_(date) on \_\_\_\_\_(date) in Application No. \_\_\_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III § 2 Cl.1 United States Constitution, Amended by U.S. Const. Amend. XI, states:

The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; - to all cases affecting Ambassadors, other Public Ministers and Consuls; - to all Cases of admiralty and maritime jurisdiction; - to Controversies to which the United States shall be a Party; - to Controversies between two or more States; [between a State and Citizens of another State], between Citizens of different States; - between citizens of the same state claiming lands under grants of different States; - [and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.]”

Article IV §1 United States Constitution states:

Full Faith and Credit shall be given in each state to the Public Acts, Records, and judicial Proceedings of every other State; and the Congress may by general Laws Prescribe the manner in which such Acts, Records, and Proceedings shall be proved, and the effect thereof.”

Article VI Cl.2 United States Constitution states:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States; shall be the Supreme Law of the Land; and the Judges in every state shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding.”



Amendment I United States Constitution states:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Amendment IV United States Constitution states:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

28 U.S.C. § 1915 (a)(1), and (9)

Judiciary and Judicial Procedure Act, 28 U.S.C. §§ 1911-1932 (2019); Chapter 123 Fees and Costs; Proceedings In Forma Pauperis, states in pertinent parts:

“Subject to Section (b), any court of the United States may authorize the Government, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefore, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant’s belief that the person is entitled to redress.”...

Leave to Proceed In Forma Pauperis. Motion in the District Court

“In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”

Federal Rules of Appellate Procedure, Rule 24(a)(1), and (b) states in pertinent parts:

“Except as stated in Rule 24(a)(3), a party to a district court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

- (A) Shows in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay or to give security for fees and costs;
- (B) Claims an entitlement to redress; and
- (C) States the issues that the party intends to present on appeal

Leave to Proceed In Forma Pauperis on Appeal or Review of an Administrative Agency Proceeding.

“When an appeal or review of a proceeding before an administrative agency, board, Commission, or officer proceeds directly in a court of appeals, a party may file in the court of appeals a motion for leave to proceed on appeal in forma pauperis with an affidavit prescribed by Rule 24(a)(1).”

Federal Rules of Appellate Procedure Rule 25(a)(1), and (4) states:

Filing. Filing with the Clerk.

“A paper required or permitted to be filed in a court of appeals must be filed with the clerk...”

Clerks Refusal of Documents.

“The Clerk must not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rule or practice.”

Federal Rules of Appellate Procedure, Rule 27(a)(1), (b), and (c) states:

Motions. In general. Application for Relief.

“An application for an order or other relief is made by motion unless these rules prescribe another form. A motion must be in writing unless the Court permits otherwise.”

### Deposition of a Motion for a Procedural Order.

“The Court may act on a motion for a procedural order – including a motion under rule 26(b) – at any time without awaiting a response, and may, by rule or by order in a particular case, authorize its clerk to act on specified types of procedural motions. A party adversely affected by the court’s, or clerk’s action may file a motion to reconsider, vacate, or modify the disposition; a motion requesting that relief must be filed.”

### Power of a Single Judge to Entertain a Motion.

“A circuit judge may act alone on any motion, but may not dismiss or otherwise determine an appeal or other proceeding. A court of appeals may provide by rule or by order in a particular case that only the court may act on any motion or class of motions. The Court may review the action of a single judge.”

Eleventh Circuit Rules, Rule 42-1(b) states:

### Dismissal of Appeals, Dismissal for Failure to Prosecute.

“Except as otherwise provided for briefs and appendices in civil appeals in (11<sup>th</sup> Cir. R. 42-2 and 42-3) when appellant fails to file a brief or other required papers within the time permitted, or otherwise fails to comply with the applicable rules, the clerk shall issue a notice to counsel, or to pro se appellant, that upon expiration of fourteen (14) days from the date thereof the appeal will be dismissed for want of prosecution if the default has not been remedied by filing to brief or other required papers and a motion to file documents out of time. Within that fourteen (14) day

notice period a party in default must seek leave of the court, by appropriate motion, to file documents out of time or otherwise remedy the default. Failure to timely file such motion will result in dismissal for want of prosecution.”

**Article 6 Universal Declaration of Human Rights** states:

“Everyone has the right to recognition everywhere as a person before the law.”

**Article 8 Universal Declaration of Human Rights** states:

“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.”

**Article 10 Universal Declaration of Human Rights** states:

“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

**Article 28 Universal Declaration of Human Rights** states:

“Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.”

## STATEMENT OF THE CASE

On February 01, 2019, Petitioner; Stephen D. Leonard, a prisoner in the State of Florida Department of Corrections, filed a civil rights case, pursuant to 42 U.S.C. § 1983, against the State of Florida and various corporations and persons therein for violations of U.S. Const. Amendments I, IV, VIII, and XIV, i.e., False Reports; False Arrest; Unlawful Detention; Denial of Access to the Courts; Denial of Indigent Legal Supplies and Envelopes/Postage; Denial of Access to the Law Library/Law Clerks; Threats of Serious Bodily Injuries; Harassment and Obstruction of Court Orders. (See Amended Complaint 19-CV-20527-RNS U.S.D.C.S.D. Fla.).

Petitioner also filed a Motion for Leave to Proceed In forma Pauperis along with the 6 months of inmate trust fund account statements, as required by 28 § 1915, which the United States District Court for the Southern District of Florida granted. On February 18, 2019, Petitioner amended the complaint in 19-CV-20527-RNS.

On February 26, 2019, United States District Court Magistrate Lisette M. Ried entered a Report and Recommendation in 19-CV-20527-RNS upon the original complaint (DE #1) and not the amended complaint filed on or about February 18, 2019 recommending “that: (1) the complaint (DE1) be dismissed, pursuant to 28 U.S.C. § 1915(g); (2) that any pending motions not otherwise ruled upon be dismissed; and (3) that this civil action be closed...”

On March 09, 2019, Petitioner timely filed objections to the R&R under: 28 U.S.C. § 636(c)(3) (2019); Thomas v. Arn, 474 U.S. 140, 150, 154 (1985); Windland v. Quatterman, 578 F.3d 314, 316 (5<sup>th</sup> Cir. 2009); Dawson v. Marshall, 561 F.3d 930, 931-33 (9<sup>th</sup> Cir. 2009).

On March 20, 2019, United States District Judge Robert N. Scola Jr., entered an order in 19-CV-20527-RNS “Adopting Magistrate Judge’s Report and Recommendation” dismissing “the complaint (ECF No. 1) without leave to amend, as further amendment would be futile in light of the Plaintiff’s status as a “three striker...”. The District Court further failed to consider the March 11, 2019 objections prior to entering the above order on March 20, 2019, only later addressing these objections.

On April 03, 2019, Petitioner filed a Motion for Rehearing pursuant to Fed. R. Civ. P. 58 and 60 seeking de novo review under 28 § 636(c)(3).

On May 10, 2019, District Judge Robert N. Scola Jr., entered an order in 19-CV-20527-RNS “Order on Petitioner’s Objection and Motion for Rehearing” claiming that the March 09, 2019 objections to the R&R was filed on March 22, 2019 (ECF No. 13), and that the objections filed on March 09, 2019 “lacks merit.”...

On May 21, 2019, Petitioner filed a Notice of Appeal, with the United States District Court in 19-CV-20527-RNS from the final judgment upon the Order on Petitioner’s Objection and Motion for Rehearing (ECF No. 18); and the Order Adopting Magistrate Judge’s Report and Recommendation (ECF No. 11). Petitioner also filed a Motion for Leave to Proceed In Forma Pauperis on Appeal along with

the 6 months of inmate trust fund account statements pursuant to 28 § 1915.

On May 28, 2019, the United States Court of Appeals for the Eleventh Circuit received the appeal papers and issued appeal No. 19-12058-E.

On May 31, 2019, United States Circuit Court Clerk David J. Smith and Deputy Clerk Gloria M. Powell, Sua Sponte, entered an Order in 19-12058-E citing: “This Court has determined that the “three strikes” provision of the Prison Litigation Reform Act of 1995 is applicable to you... Consistent with 28 U.S.C. § 1915(g), this appeal cannot proceed until the full docketing and filing fees are paid to the United States District Court. Pursuant to 11<sup>th</sup> Cir. R. 42-1(b), you are hereby notified that if the fees have not been paid within fourteen (14) days from this date, this appeal will be dismissed without further notice by the Clerk.”...

On June 13, 2019, Petitioner filed a Motion for Reconsideration in the United States Court of Appeals Case 19-12058-E pursuant to 28 § 1915(a)(1), (2) and Rule 27 of the Fed. R. App. P., citing that Petitioner’s Case/appeal clearly cites to imminent danger of serious bodily harm which is an exception to 28 § 1915(g) dismissal under “three strikes.” Gibbs v. Roman, 116 F.3d 83, 85 (3d Cir 1997); Markowitz v. Northeast Land Co., 906 F.2d 100, 103 (3d Cir. 1990); Nami v. Fauver, 82 F.3d 63, 65 (3d Cir. 1996).

On June 21, 2019, the United States Court of Appeals for the Eleventh Circuit, and United States Circuit Court Clerk David J. Smith and Deputy Clerk Gloria M. Powell received Petitioner’s Motion for Reconsideration in 19-12058-E.



On June 26, 2019, the United States Court of Appeals for the Eleventh Circuit, and United States Circuit Court Clerk David J. Smith and Deputy Clerk Gloria M. Powell entered an order in 19-12058-E “Entry of Dismissal: pursuant to 11<sup>th</sup> Cir. R. 42-1(b),...”

On June 27, 2019, the United States Court of Appeal for the Eleventh Circuit, and United States Circuit Court Clerk David J. Smith and Deputy Clerk Gloria M. Powell “Returned Unfiled: Motion for Reconsideration filed by Stephen Daniel Leonard... because this case is closed...”

On July 01, 2019, Petitioner timely filed a “Petition for Panel Rehearing” in the United States Court of Appeals for the Eleventh Circuit seeking panel review upon: (1) the legality of the United States Court of Appeals for the Eleventh Circuit allowing a Clerk of the Court to rule upon a Motion for Leave to Proceed In Forma Pauperis on Appeal pursuant to Rule 24(a)(5) Fed. R. App. P.; (2) the legality and unconstitutionality of the United States Court of Appeals for the Eleventh Circuit violating Petitioner’s due process rights under Am. V to the U.S. Const. when refusing to file the Motion for Reconsideration on July 21, 2019 while the case was open; (3) the legality and unconstitutionality of the United States Court of Appeals for the Eleventh Circuit violating Petitioner’s due process rights under Am. V to the U.S. Const. when arbitrarily closing the case (appeal no. 19-12058-E) without considering that the “three strikes” does not apply to this case as Petitioner clearly set forth facts showing imminent danger of serious bodily injuries which is an exception to 28 § 1915(g); and (4) the United States Court of Appeals for the

Eleventh Circuit acted arbitrarily, abusing its discretion in wanton disregard of the U.S. Const.: Art. III § 2, Art. IV; Art. VI § 2; Am. I; Am. IV; and Am. V, and U.D.H.R. (Universal Declaration of Human Rights) art. 6; Art. 8; Art. 10 and Art. 28, when dismissing the appeal.

On July 12, 2019, the United States Court of Appeals for the Eleventh Circuit, and United States Circuit Court Clerk David J. Smith and Deputy Clerk Gloria M. Powell “Returned Unfiled: Motion for Extension of Time to File Brief, Motion for Leave to Proceed In Forma Pauperis on Appeal, District Court Affidavit to Proceed I.F.P. by Stephen Daniel Leonard... because this case is closed...”

On August 16, 2019, United States District Judge Robert N. Scola Jr. entered an Order in 19-CV-20527-RNS “Order Denying Motion to Appeal In Forma Pauperis” citing that Petitioner’s “appeal is not taken in good faith.”...

On or about August 29, 2019, Petitioner filed a Notice of Appeal to the United States District Court for the Southern District of Florida in 19-CV-20527-RNS upon the Court’s order on August 16, 2019 Denying Motion to Appeal I.F.P. and the Affidavit Accompanying Motion for Permission to Appeal I.F.P. along with 6 months inmate trust fund account statements.

On September 09, 2019, Petitioner filed the “Supplemental Affidavit to Motion for Permission to Proceed I.F.P. on Appeal” in 19-CV-20527-RNS and in 19-12058-E.

On September 25, 2019, the United States Court of Appeals for the Eleventh Circuit, and United States Court Clerk David J. Smith and Deputy Clerk Gloria M.

Powell “Returned Unfiled: Motion to Consolidate Appeals filed by Stephen Daniel Leonard... because this case is closed...”

This Petition for issuance of an Extraordinary Writ ensues.

The United States Court of Appeals for the Eleventh Circuit, United States Circuit Clerk David J. Smith and Deputy Clerk Gloria M. Powell violated Petitioner’s rights to an appeal; fair hearing; and redress of grievances by (1) falsely claiming “that the three strikes provision of the Prison Litigation Reform Act of 1995 applies to you.” (2) by refusing to file the Motion for Reconsideration with the Court received on June 21, 2019; (3) returning unfiled the Motion for Reconsideration, Motion for Leave to Proceed In Forma Pauperis on Appeal, Petition for Panel Rehearing and Et. al., and (4) closing the case on June 26, 2019, without allowing the June 21, 2019 Motion for Reconsideration to be reviewed by the Court as an objection to the Clerk’s actions on May 31, 2019 pursuant to Rule 27(b), (c) Fed. R. App. P. and in violation of the 11<sup>th</sup> Cir. R. 42-1(b).

## REASONS FOR GRANTING THE PETITION


- I. The United States Court of Appeals for the Eleventh Circuit, Clerk David J. Smith and Deputy Clerk Gloria M. Powell abused their discretion when viewing the appeal 19-12058-E as an appeal under the three strikes provision of the PLRA of 1995, when Petitioner clearly cited in the complaint and amended complaint that Petitioner was in imminent fear of serious bodily injuries. Carson v. Johnson, 112 F.3d 818, 821 (5<sup>th</sup> Cir. 1997); M.L.B. v. S.L.J., 519 U.S. 102 (1996); Bounds v. Smith, 430 U.S. 817, 821-22 (1977); see also Fed. R. App. P. Rule 3(a)(1).
  
- II. The United States Court of Appeals for the Eleventh Circuit, Clerk David J. Smith and Deputy Clerk Gloria M. Powell violated Fed. R. App. P. Rule 25(a)(4) when refusing to accept for filing Petitioner's legal documents.
  
- III. The United States Court of Appeals for the Eleventh Circuit, Clerk David J. Smith and Deputy Clerk Gloria M. Powell violated "Petitioner's right to appeal when dismissing the case Pursuant to 11<sup>th</sup> Cir. R. 42-1(b)."
  
- IV. The United States Court of Appeals for the Eleventh Circuit, Clerk David J. Smith and Deputy Clerk Gloria M. Powell violated Fed. R. App. P. Rule 24(a)(1), (5) when refusing to accept and file the Petitioner's Motion for Leave to Proceed I.F.P. on Appeal on July 01, 2019. See Martinez v. Kristi Kleaners, Inc., 364 F.3d 1305, 1306 (11<sup>th</sup> Cir. 2004); see also Daker v. Commissioner, Georgia Department of Corrections, 820 F.3d 1278, 1281 (11<sup>th</sup> Cir. 2016).

- V. The United States Court of Appeals for the Eleventh Circuit, Clerk David J. Smith and Deputy Clerk Gloria M. Powell violated Treaties made by the United States, i.e. U.D.H.R. Articles 6, 8, 10, and 28, when denying Petitioner: (1) the right to recognition as a person before the law; (2) the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law; (3) the right in full equality to a fair and public hearing by an independent and impartial tribunal...; and (4) to a social and international order in which the rights and freedoms set forth in this Declaration..." See generally Medellin v. Texas, 128 S. Ct. 1346 (2008) (dissent of Bryer, J. with whom Souter and Ginsburg, J.J. join) ("The Constitution's Supremacy Clause provides that: "all treaties... which shall be made... under the authority of the United States, shall be the Supreme law of the land; and the judges in every state shall be bound thereby." Art. IV §2. The clause means that the "Courts" must regard "a treaty ... as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision." Foster v. Neilson, 2 Pet. 253, 314, 7 L. Ed 415 (1829) (majority opinion of Marshall, C.J.); see also Am. 94(1), 59 Stat. 1051 (United Nations Charter), T.S. No. 993 (1945).

CONCLUSION

The petition for Extraordinary Writ should be granted.

Respectfully submitted,

/s/   
Stephen Daniel Leonard # 448091  
Cross City Correctional Institution  
568 N.E. 255<sup>th</sup> Street  
Cross City, Florida 32628

Petitioner, pro se

Date: December 02, 2019.